

**DIVISION CIRCULAR #5
(N.J.A.C. 10:41-4)**

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF DEVELOPMENTAL DISABILITIES**

EFFECTIVE DATE: August 16, 1999

DATE ISSUED: September 10, 1999

(Rescinds DC #5, "Human Rights Committee", issued April 18, 1994.)

I. TITLE: Human Rights Committee

II. PURPOSE: To establish policies and standards for the composition and operations of the Division's Human Rights Committees as well as those agencies under contract with or regulated by the Division.

III. POLICIES:

- Human Rights Committees are established to ensure that developmentally disabled individuals are entitled to exercise the same human and civil rights enjoyed by other citizens. These rights shall be limited or modified only to the extent necessitated by the individual's needs, and such limitations shall be documented in the client record.
- The Rights of the Developmentally Disabled are stated in N.J.S.A. 30:6D-1 et seq.
- Special attention and effort are required to assure that the human and civil rights of persons with developmental disabilities are exercised and protected.
- All staff and contract service providers have a responsibility to advocate for and protect the rights of developmentally disabled persons. A Human Rights Committee does not supplant or reduce this responsibility, but rather augments it by providing a structure forum to deal with human rights issues.

V. **GENERAL STANDARDS:**

NOTE: The remainder of this circular is the Human Rights Committee as it appears at N.J.A.C. 10:41-4.

_____/s/_____
James W. Smith
Deputy Commissioner

SUBCHAPTER 4 - HUMAN RIGHTS COMMITTEES

10:41-4.1 Scope

The rules in this subchapter establish the composition and operation of the human rights committee in developmental centers, regions of the Office of Community Services, and in the agencies and facilities under contract with or regulated by the Division of Developmental Disabilities, within the State of New Jersey.

10:41-4.2 Purpose

The purpose of this subchapter is to establish standards for the composition and operation of the Division's human rights committees, as well as those in agencies under contract with or regulated by the Division, within the State of New Jersey.

10:41-4.3 Definitions

The words and terms used in this chapter shall have the following meanings, unless the context clearly indicates otherwise.

"Behavior Management Committee" (BMC) means a representative body of individuals who have clinical expertise and individuals who have administrative authority within the Division component or provider agency who review behavior plans and who make a judgment as to whether or not the plans are clinically and technically appropriate.

"Chief Executive Officer" (CEO) means the person having administrative authority over, and responsibility for a state operated developmental center, or a private residential facility licensed under N.J.A.C. 10:47.

"Division" means the Division of Developmental Disabilities.

"Executive Director" means the person having administrative authority over a private agency which operates community based program(s) regulated by, or under contract with the Division.

"Human Rights Committee" means a group comprised of professionals, individuals served, advocates and/or interested persons from the community at large who function as an advisory body to the regional assistant director, CEO, executive director, or regional administrator, on issues directly or indirectly affecting the rights of individuals served.

"Non-Affiliated member" means a member of a committee who is not employed by the service component, facility or agency.

“Regional Administrator” means the person having administrative authority and responsibility over a region of community services.

10:41-4.4 Rights of individuals with developmental disabilities.

- (a) Developmentally disabled individuals are entitled to exercise the same human and civil rights enjoyed by other citizens. These rights shall not be limited or modified unless the individual’s disability limits the exercise of these rights. Staff shall make efforts to assure that the human and civil rights of developmentally disabled individuals are protected and exercised.
- (b) Limitations of an individual’s rights shall be documented in the client record.
- (c) All staff and contract providers shall advocate for and protect the rights of developmentally disabled individuals in programs for which they are responsible. Staff and contact service providers shall utilize the structured form of the human rights committee as an assist in protecting the rights of the developmentally disabled.

10:41-4.5 Role of the human rights committee

- (a) The human rights committee shall exercise an advisory role [only in relation] to the regional administrator, CEO or executive director.
- (b) The regional administrator, CEO or executive director shall make the final decision on any issue regarding the rights of a person receiving services and when proceeding against the advice and recommendations of the human rights committee, shall document the substantive reasons for proceeding against the advice and recommendations of the human rights committee in the client record.
- (c) The orientation of the human rights committee shall be proactive and preventative. The committee shall recommend procedures and programs which safeguard the rights of the individual.
- (d) It is essential that the regional administrator, CEO or executive director, shall ensure that each committee be afforded a private meeting area and an atmosphere respectful of its independence and objectivity as a review group.

10:41-4.6 Appointment of members

- (a) The members of the human rights committee shall be appointed by the regional administrator, CEO or executive director for a two year term. The term may be renewable.
- (b) There shall be no more than one-third common membership of the behavior management committee and the human rights committee of any service component, facility or agency.
- (c) A human rights committee shall consist of a minimum of five and a maximum of 15 members, at least one-third of whom shall not be employed by the component, facility or agency.
- (d) The Division shall have the option of assigning an observer who is not a voting member to the human rights committee of any agency or facility with its own human rights committee.

10:41-4.7 Appointment and duties of chairperson and vice-chairperson

- (a) A chairperson and vice-chairperson shall be elected by a majority vote of each human rights committee.
- (b) The chairperson and vice-chairperson may be staff members or individuals from outside the developmental center, region, agency or facility.
- (c) The chairperson and vice-chairperson shall serve a two year term to which they may be reelected.
- (d) The vice-chairperson shall assume the responsibilities of the chairperson in his or her absence.

10:41-4.8 Conflict of Interest

- (a) If any matter which arises in the committee's deliberations should constitute a conflict of interest for a member of the committee, that member shall abstain from voting on that issue.
- (b) Representatives of legal services, such as the New Jersey Protection and Advocacy, Inc., or other agency, who may represent future individual interests, shall not be appointed members of a human rights committee as defined in this subchapter. Their role and authority exist independent of this advisory body.

10:41-4.9 Filling vacancies created by unexpired terms

- (a) Any human rights committee member who cannot complete his or her term shall communicate this in writing to the regional administrator, CEO or executive director at least two weeks before the date of resignation.
- (b) If any human rights committee member, for good reason, cannot complete his or her term, the regional administrator, CEO or executive director shall appoint a replacement within 30 days of the creation of a vacancy.

10:41-4.10 Removal of human rights committee members

- (a) A committee member may be removed by the regional administrator, CEO or executive director, for a good cause, based upon a two-thirds majority vote of the full committee. The member who may be removed shall not vote on the action.
- (b) If a member of the committee cannot be present for the meeting, he or she shall send an absentee vote to the chairperson prior to the meeting.

10:41-4.11 Meetings of the human rights committee

- (a) The human rights committee shall meet at least every two months, and preferably every month. Attendance of 50 percent of the total membership shall constitute a quorum.

10:41-4.12 Minutes of the meeting

- (a) Minutes of the meeting shall be retained on file in the office of the regional administrator, CEO or executive director, and shall be available to Division staff.
- (b) Copies of the minutes shall be provided to the members of the committee.
- (c) Copies of the minutes of human rights committees', within the developmental centers and the regional offices, shall be forwarded to the Division Director within two weeks of the date of the meeting.
- (d) For agencies with their own committees, the minutes shall be forwarded to the regional administrator.

10:41-4.13 (Reserved)

10:41-4.14 General committee functions

- (a) The functions of a human rights committee shall include, but not be limited to the following:
1. To advise the regional administrator, CEO or executive director with regard to issues, regarding the human and civil rights of individuals, bringing to his or her attention existing or potential infringements upon, or impediments to the free exercise of individual's rights including recommendations for action.
 2. To contribute to the development of revision of policies and procedures directly relating to individual's rights.
 3. To review alleged or suspected violation of the rights of individuals or groups of individuals brought to the attention of the committee and to recommend investigation of violations, as deemed appropriate by the committee.
 4. To review behavior modification plans which employ the use of procedures not prohibited by law or rule which may present an element of risk and/or restriction to an individual's rights.
 5. To review the proposed involvement of persons participating in research projects.
- (b) The human rights committee shall have available to it all information that is necessary to perform its functions. The committee shall have the right to observe programs and/or activities and conduct interviews in order to clarify a problem. Confidentiality of all information obtained shall be observed by the committee members, pursuant to N.J.S.A. 30:4.23.
- (c) The human rights committee shall have the right to request expert advice from outside the committee, as the committee deems appropriate.

10:41-4.15 Responsibilities of the chairperson

- (a) The chairperson of the committee shall be responsible for the following:
1. Scheduling regular and special meetings and setting the agenda for each meeting;
 2. Arranging for recording and transcription of minutes;
 3. Forwarding copies of the minutes and other communications to the members of the committee, regional administrator, CEO or executive director; and

4. Requesting consultation from outside the committee based upon a decision of the committee.

10:41-4.16 Decision making process; behavior modification plans

- (a) In the review of aversive techniques, the committee should reach consensus on the use of a specific technique. If this does not occur, recommendations for approval may be given if only one member disagrees with the technique(s). If two or more members disagree, a recommendation for approval shall not be granted by the committee. The dissenting members shall suggest alternate technique(s).

10:41-4.17 Orientation to the human rights committee

- (a) Individuals who are appointed to the human rights committee shall receive, from the developmental center, regional office, facility or agency, at a minimum, informational and instructional material relevant to the services provided by the human rights committee.

10:41-4.18 Provider agency committees

- (a) The administrator of each regional office shall review cases heard before facility or agency committees within the region.
- (b) The CEO of a private residential facility or executive director shall establish a line of communication with the regional administrator of the appropriate office to facilitate case reviews.
- (c) Any concern about the general functioning of the committee shall be resolved between the CEO or executive director and the chairperson of the committee. If these concerns cannot be resolved, the matter shall be referred to the regional administrator for resolution.
- (d) Provider agencies may elect to have their own committee or utilize a committee within an appropriate Division component upon consultation with and recommendation of the regional administrator.

10:41-4.19 Procedures for provider agency committees

- (a) Provider agencies using their own human rights committees shall have procedures regarding the composition and operation of the committee, which shall be included in the agency or facility, manual and which shall be consistent with the provisions of this subchapter.

10:41-4.20 Membership of provider agency human rights committees

- (a) The CEO of a private residential facility or executive director shall appoint members of the committee, one of whom may be a Division employee.
- (b) The Division may assign an observer who is not a voting member of the committee under the following conditions:
 - 1. The observer shall be familiar with the agency or facility, its manual and the general function of the committee.
 - 2. Should the observer have concerns about the agency or facility, he or she shall bring these concerns to the CEO of a private residential facility or executive director.
 - 3. If the observer's concerns are not resolved, he or she shall report these concerns to his or her immediate supervisor.
- (c) Any change in the membership of the committee shall be reported to the regional administrator within 30 days.

10:41-4.21 Notification of meetings

- (a) The provider agency shall notify the Division at least five working days in advance of routine meetings and shall notify the Division immediately, by telephone, of any emergency meetings.

10:41-4.22 Minutes of meeting

- (a) The minutes of provider agency meetings shall be available for review by persons authorized by the Division Director.
- (b) Committee members and observers shall be provided with copies of the minutes.

DEPARTMENT OF HUMAN SERVICES
DIVISION OF DEVELOPMENTAL DISABILITIES

DATE: January 30, 2002

TO: Distribution List

FROM: Deborah Trub Wehrlen
Director

SUBJECT: Division Circular 5
Appendix A

The attached appendix addresses the measures to be taken by staff of Community Services and agencies under contract with or regulated by the Division with regard to the operation of Human Rights Committees. The appendix does not apply to developmental centers operated by the Division.

The appendix identifies numerous issues that should be reviewed by a Human Rights Committee. The appendix was issued to provide guidance in upcoming audits by the Center for Medicare and Medicaid Services (CMS).

Each regional office and provider agency is required to have access to a Human Rights Committee. This requirement does not apply to Community Care Residences licensed under N.J.A.C. 10:44B. Provider agencies may have their own committees, utilize a Regional Human Rights Committee or make arrangements to use the committee of another provider agency. Please note that the Regional Committee may not be able to handle all requests from provider agency.

Provider agencies shall advise Paula DiVenuto, Assistant Director for Quality Enhancement, in writing, of the membership of their Human Rights Committee by March 15, 2002.

File Name: DC5Appendix

APPENDIX A

NEW JERSEY DIVISION OF DEVELOPMENTAL DISABILITIES

- I. TITLE:** **HUMAN RIGHTS COMMITTEE STATEWIDE GUIDELINES
COMMUNITY SERVICES AND PROVIDER AGENCIES
DIVISION CIRCULAR #5**

- II. PURPOSE:** To ensure that Human Rights Committees (HRC) regulated by the New Jersey Division of Developmental Disabilities operate as objective review boards, which are consistent with the guidelines of Division Circular #5 in protecting the human and civil rights of persons with developmental disabilities. Specifically, the HRC will review and evaluate individual programs designed to manage inappropriate behavior and other strategies that may involve risks to client protection and rights. Any program, which incorporates restrictive techniques (e.g., restraints, medication to manage behavior, restrictions on community access, etc.), requires the authorization and periodic review of the HRC. Prior to implementation, the HRC recommendations must be presented to the Community Services Regional Administrator or Provider Agency Chief Executive Officer. Within these HRC Guidelines, this individual will be referred to as the “Administrator”. The Administrator may accept, accept with modification, or not accept the recommendations of the HRC.

- III. STANDARDS:** All Human Rights Committees will operate in compliance with the policies and standards of Division Circular #5. All Community Service Offices and Provider Agencies must utilize a specially constituted Human Rights Committee, which fully complies with the membership and meeting requirements of Division Circular #5. Provider Agencies may maintain their own HRC or utilize the Regional Community Services’ HRC.

Division Circular #5 emphasizes the need for Human Rights training and orientation for all Committee members. Administrators are expected to support the Committees by providing any necessary technical assistance or training, which is requested by the Chairperson.

IV. PROCEDURES

- A.** Human Rights issues shall include, but are not limited to; those delineated in the Rights Act for Persons with Developmental Disabilities. Examples include:
- ☐ **The analysis of trends regarding the utilization and follow up of psychotropic medication administration for persons with developmental disabilities.**
 - ☐ **Any issues involving aversive behavioral modification or control techniques, as outlined in DC #34.**
 - ☐ **Research proposals requiring HRC review, as indicated in Division Circular #27.**
 - ☐ **The analysis of trends regarding abuse, neglect and mistreatment of individuals.**
 - ☐ **The analysis of trends regarding allegations dealing with the theft or damage of an individual's property or funds.**
 - ☐ **Procedures which limit an individual's rights to have visitors or to visit others.**
 - ☐ **Issues regarding grievances or grievance resolution procedures for eligible individuals.**
 - ☐ **Placement or transfer disputes regarding eligible individuals. Issues involving restrictions upon individual access to possessions and leisure materials.**
 - ☐ **Issues regarding individual access to Self-Advocacy programs.**
 - ☐ **Alleged violations of individual confidentiality issues i.e. the posting of consumer specific identifying information in public areas of a residence or work program.**
 - ☐ **Situations involving conflict between individuals' rights.**
 - ☐ **Restrictions upon the free exercise of religious preferences.**

- ❑ **Restrictions upon telephone, mail, or other forms of communication.**
 - ❑ **Restrictions concerning personal funds.**
- B.** Any DDD Staff within the Community Services Regions or Central Administrative Office - this includes both Direct Consumer Care and Professional Staff - may make referrals to the Human Rights Committees through the HRC Chairperson. Service recipients, Provider Agency Staff, parents, guardians, or other advocates for individuals may also contact the HRC Chairperson regarding referrals.
- C.** The HRC Chairperson will ensure those relevant, necessary Interdisciplinary Team Meetings, Behavior Management Committee Meetings, and medical or psychiatric reviews precede referrals to the HRC. The Chairperson of the Human Rights Committee may refer issues back to appropriate review panels i.e. Unusual Incident Review Committee.
- D.** The Chairperson will determine if the issues addressed in the referrals constitute an actual or potential infringement upon the free exercise of an individual's rights. If the Chairperson determines that the referral does not meet the HRC criteria, he or she shall draft an explanation for the next Committee minutes and will review with the full Committee, which will be the final arbitrator of any concerns regarding the relevancy of referral issues.
- E.** The HRC Chairperson will immediately review crisis referrals with the Administrator. Also, such referrals will be reviewed expeditiously during emergency meetings of the Committees. Non-critical cases will be addressed, during the next scheduled Committee meeting. The Administrator or guardians serving individuals may approve necessary emergency treatments. Such issues shall be reviewed by the HRC at a subsequent meeting.
- F.** As emphasized in Division Circular #5, Committee members are expected to meet six times per year, at a minimum. Patterns of absence by Committee members are not acceptable.
- G.** Members' terms on the HRC require the biyearly review and approval of the Administrator and Chairperson. Members who withdraw from the Committee must send a letter of resignation to the Administrator through the Chairperson.

- H.** Within the function of an objective, proactive advisory panel to the Administrators, the Human Rights Committees will review issues, and the Chairperson present recommendations to the Administrators, within two weeks of the meetings.
- I.** In the review of aversive techniques or possible rights restrictions, the Committee should reach consensus on the specific issues. If this does not occur, recommendations for approval may be given by a majority vote of the Committee. Discussions of the Committee's review shall be documented in the meeting minutes, and dissenting viewpoints will be documented.
- J.** The Committee Chairpersons shall forward the meeting minutes to the respective Administrators, within two weeks, for review and comment. In emergency situations, the recommendations shall be conveyed to the Administrators immediately - in person, or by telephone and electronic mail. Chairpersons of Provider Agency Committees shall also ensure that meeting minutes are submitted to the Regional Administrator of the respective Community Services office. Additionally, Regional HRC meeting minutes shall be forwarded to the Supervisor of the DDD Quality Improvement Unit.
- K.** The Administrator will respond to the HRC Chairperson within two weeks on non-crisis issues, or immediately, on crisis issues, regarding the acceptance, qualified acceptance, or non-acceptance of the recommendations. The Administrator will explain the rationale for his or her decisions and exchange views with the Committee Chairperson. Follow-up activities designed to protect individuals' human rights are the responsibility of the respective Administrator.
- L.** The Chairperson will incorporate the Administrator's decisions and comments into the minutes of the meeting, which will be distributed to the Committee members as the first agenda item of each meeting. The Committee will review the Administrator's responses and plan for follow-up activities. The Chairperson will then outline the Administrator's decisions to the person/s who presented the referral to the HRC. Committee members will receive subsequent updates, as available, regarding progress on the review recommendations.